

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1961 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES
2. To be referred to the Reporter or not ?YES

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3. Whether Their Lordships wish to see the fair copy of the judgement ? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? YES

1.SUHANA S.NAGORI & 2 OTHERS

Versus

S.B.NAGORI & 1 OTHER

Appearance:

MR MM TIRMIZI for Petitioner
MR UA TRIVEDI, APP for Respondent No. 1
Respondent No.2-absent.

CORAM : MR.JUSTICE K.J.VAIDYA
Date of decision: 09/01/97

ORAL JUDGEMENT

"Whether in a Criminal Revision Application
challenging the impugned order of maintenance awarded to

wife and children, the Sessions Court was justified in reappreciating the evidence as if sitting in appeal and thereby quashing and setting aside the order passed by the learned Magistrate which by no stretch of imagination can be said to be without jurisdiction and/or in any way perverse beyond the ken of ordinary prudence ? " This question arises in the background of the fact-situation as stated hereunder :-

1.1 The petitioner-Suhana is a wife of the respondent No. 1 Sikandarkhan B. Nagori, serving as S.T. Driver, residing at Bayad. On the alleged ground that her husband respondent no-1 was beating and ill-treating her and consequently on her leaving the house residing at the parental home, was also further neglecting to maintain her and her two minor children - Asiya - aged about 2 1/2 years and Shakila aged about 6 years, the petitioner filed an application for maintenance for herself and her two minor children under section 125 of the Criminal Procedure Code, 1973 in the court of the learned Chief Judicial Magistrate, Idar, against her husband, which came to be registered as Misc. Criminal Application No. 32/92. This came to be allowed by the judgment and order dated 24-2-1993, wherein the respondent-husband was directed to pay Rs.400/- to the petitioner and Rs. 200/= each to her two minor children. Aggrieved by the said order, the respondent challenged the same by filing Criminal Revision Application No. 13/93 before the Sessions Court Sabarkantha at Himatnagar, which came to be allowed by the judgment and order dated 30-8-1994, giving rise to the present Special Criminal Application under Article 227 of the Constitution of India.

2. Heard Mr. M.M. Tirmizi, the learned advocate for the petitioner and Mr. U.A.Trivedi, the learned APP appearing for the respondent-State. The respondent No.1 husband, though duly served, has neither remained personally present nor through his learned advocate. Accordingly, this petition is disposed off with the assistance of the learned APP.

3. On going through the impugned judgment and order passed by the learned Sessions Judge, it requires to be stated at the very outset that the same is ex-facie illegal and perverse, which deserves to be quashed and set aside atonce restoring the order passed by the learned Magistrate awarding maintenance to the petitioner and her two minor children. It appears that the learned Sessions Judge has clearly over-looked and ignored firstly the scope and extent of his revisional powers;

and secondly, the fundamental principles of appreciation of evidence entering the prohibited zone of perversity. The whole thrust of his unfortunate reasoning for discarding the evidence of the petitioner is based on two major planks viz., (i) that no independent witnesses either from the neighbourhood or otherwise is examined by the petitioner-wife in support of her allegations; and (ii) that the father PW-18 Bhikhumiya and the uncle PW-20 Faridkhan Hemantkhan Nagori, whom the petitioner examined, they being related to her were interested witnesses and accordingly can not be said to lend much needed independent corroboration to her evidence.

3.1 Now, the first thing which is required to be noted is the fact that in such type of cases persons having intimate, close relations with the aggrieved wife are quite natural and best witnesses available to throw light on the alleged incident. Accordingly, merely because the petitioner wife in her support examined her father and uncle, their evidence cannot be mechanically discarded stamping them out as relatives and therefore interested needing first the independent corroboration to qualify for its acceptance !! Infact, under such circumstances as in the present one, relatives are indeed easily the best witnesses whose services for the cause of justice cannot be dispensed with.. In this view of the matter but for some manifest perversity, improbability, gross improvement and material contradiction cutting at the root of the petitioner's case their evidence cannot be lightly brushed aside. Further more, in the instant case and for that purpose even in any other cases wherein the learned Magistrate who conducted the proceedings had an additional opportunity to observe witnesses and their demeanour while in witness box giving evidence before him and from this if he found their evidence quite credible inspiring the confidence, their evidence can not be lightly brushed aside. Further still in the nature of such cases between the husbands and wives wherein there are continuous bickerings and quarrels the apathy of the members of the society and in particular of the neighbours is quite too well known to take judicial notice of it. They never like to dabble and interfere in their private affairs even if they know who was at fault. They obviously prefer avoiding and giving any sort of statement either way for or against wife or the husband as the case may be because that would unnecessarily strain and spoil their otherwise smooth personal relations against whom they were required to give the statements and then evidence ! Ordinarily, none in their understanding or even craze for assisting the cause of justice and for that purpose Court of law would be so

readily indiscreet to give evidence before the Court against any party risking and inviting problems for themselves disturbing otherwise peaceful, harmonious, placid life of theirs except in few exceptional cases where some conscientious, sensitive neighbours or sometimes some got up witnesses from the neighbour come before the Court to give right or wrong evidence. This sort of natural, normal, ordinary, individual or social conduct pattern cannot be sidelined to be ruled out. In this view of the matter but for some rare exceptions to expect the neighbours like a fire-bridgade to readily rush and come forward to give the evidence is to expect something practically impossible - milking the dead-cow !! When such is the foregone state of ordinary affairs of behavioural pattern any unreasonable expectation and insistance by way of corroboration to the evidence of the wife by the independent witnesses viz. neighbours is something beyond ordinary human comprehension and prudence and accordingly, unwarranted and uncalled for. Further still, ordinarily, no wife with two minor children with neither any independent source of income nor any separate shelter to stay under-thus with noose of threatening uncertainty round her neck would like rather risk to abonden her safe and secured matrimonial home and take shelter under the parental house becoming burden and liability to them ! In this view of the matter also, when a wife comes before the Court with definite allegations against her husband of beating and neglecting her, to doubt and discard it on too general and spacious ground that no independent witnesses are examined to support her case and the witnesses who are examined by her being relatives can not be relied upon being the interested, ordinarily is indeed too unreasonable, imprudent, harsh and unjust way to deal with the situation. Nodoubt once a while in a given case, wife may be at fault, rather at gross fault and the poor bewitched and haunted husband is at the receiving end !! Accordingly, there are cases and cases where in given cases sometimes , wives are found to be over-powering, extorting, blackmailing and cruel not only to her husband but also to her other innocent inlaws, family members, but then in that case, serious efforts are required to be made to make out the case. Even the concerned Court while considering the case of a wife should be careful enough not to be swayed sometimes under her crocodile tears merely because she is woman assuming what she says is the gospel truth and what the husband says before the Court is always utter falsehood. The Court must make honest effort to find out the ultimate truth after carefully examining the evidence before it in proper perspective, giving reasons for the said finding. Of

course, by and large, since this type of cases are quite rare, ordinarily, evidence of wife requires to be accepted unless apparently doubtful and unbelievable.

4. Further more, the learned Judge ought not to have been oblivious to the limitations of his revisional powers under the Code where he was not the least even empowered and accordingly expected to reappreciate the evidence afresh as if sitting in appeal, unless of course the same was found to be manifestly unreasonable and perverse calling for the interference in the ultimate and overall interests of justice. As stated above, the grounds on which the evidence of the petitioner-wife came to be shunted-off by the learned Sessions Judge being ex-facie perverse and illegal, and accordingly error apparent on the face of record, the impugned order disallowing the maintenance to the petitioner-wife and her two children is required to be quashed and set aside in the interests of justice.

5. This court indeed is quite conscious of the fact that it is entertaining a petition under Article 227 of the Constitution of India where the scope for interference is quite limited, if not nil. This court is also further conscious of the fact that under section 482 of the Code it has been vested with enough inherent power to invoke the extra ordinary jurisdiction when it finds that the ends of justice so demands, the impugned order passed by the learned Sessions Judge can be quashed and set aside. Bearing in mind these basic governing principles, there indeed can not be any other better case than the case at hand which calls upon this court to exercise its extra ordinary powers under Article 227 of the Constitution and/or section 482 of the Code to run in rescuing the helpless wife and her two children from whose mouth the daily maintenance and shelter is sought to be snatched away by virtue of an impugned order passed by the Sessions Court. In this view of the matter, this being one of those fittest case, there is indeed no alternative left with this court but to sparingly interfere and allow this petition by quashing and setting aside the impugned order passed by the Sessions Court, restoring the order of the learned Magistrate awarding maintenance to petitioner-wife and her two minor children.

6. It appears from the evidence of the respondent No. 1 that he is serving as a Driver in Gujarat State Road Transport Corporation. In this view of the matter, with a view to see that maintenance order passed by the learned Magistrate is not reduced to mere lip-sympathy

and/or the paper decree, and further more to save petitioner wife and her children from follow-on after one round of the proceedings before the learned Magistrate and have a second inning by filing yet another application for executing the award and accordingly going from one court to the other court in other words from the pillar to the post for execution of the maintenance award, the appropriate GSRT Corporation-authority paying the salaries to the respondent-husband is hereby specifically directed in the first instance to cut every month at source the total amount of Rs.800/= per month (Rs. 400/= maintenance for wife and Rs.200/- each for two minor children) from his monthly salary, and thereafter only pay the rest of the balance amount of the salary to the respondent No. 1. In this regard, the concerned authority in ST Corporation is directed to pay the aforesaid amount of Rs.800/- to the petitioner by sending AC payee Cheque/Demand Draft only, at her residential address so as to reach her in the first week after the payment of salary. The concerned officer of ST Corporation shall also intimate the concerned court every month about sending the cheque/draft as agreed (as the case may be) to the petitioner. The trial court is also directed to keep on record the intimation sent by ST authority. The petitioner is accordingly directed to open an account in any Nationalised bank for this purpose. It is further made clear and accordingly the concerned officer of ST Corporation to take a notice that in case if this specific order of deducting the maintenance amount from the monthly salary of respondent No. 1 and forwarding a cheque and/or Demand Draft of Rs. 800/= every month is not carried out in letter and spirit, then the concerned officer shall render himself liable for proceedings of contempt of the court.

6.1 As regards the payment of arrears of maintenance amount, it appears that the respondent No. 1 has failed and neglected to pay the same and therefore he is in arrears. The respondent No. 1 accordingly is directed to deposit entire amount of arrears of maintenance before the trial court on or before 30-6-1997. The petitioner would be at liberty to withdraw the same. In case, if the respondent No. 1 fails to comply with this order, he shall render himself liable for the contempt of the court, as held in case of Shilpa Bansilal Shah versus Bansilal Shah, reported in 1993 (1) GLH P.783=1993 (1) GLR,P.223.

7. In the result, this petition is allowed. The impugned judgment and order passed by the Sessions Court is quashed and set aside restoring the judgment and order

of maintenance passed by the learned Magistrate. Rule made absolute.

8. The office is directed to immediately forward a copy of this judgment and order to (1) Shri S.B.Nagori- the respondent No.1 (2) Chair-person, Gujarat State Road Transport Corporation, Ahmedabad; and (3) the Metropolitan Magistrate Court, Ahmedabad, for information and necessary action.

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